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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,367	02/15/2002	Leonard Ekkert	81553	3718

7590

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Gerald T. Shekleton, Esq.
Welsh & Katz, Ltd.
22nd Floor
120 S. Riverside Plaza
Chicago, IL 60606

EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3727

7

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NYK

Office Action Summary

Application N .

10/077,367

Applicant(s)

EKKERT, LEONARD

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: for example "portion 30" and "Fig. 4a" (see page 5 of the specification). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: in page 8, the last sentence "For purposes ...conjunctive" should be deleted because the claims should not be mentioned in the specification..

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-4, 8-10 and 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 2-4, 8-10 and 14-17, it is unclear what is prepared with the sealing surface.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by DeMeo (5,972,292).

In regard to method claims 1-5, DeMeo disclose in col. 4, lines 9-18, col. 8, lines 39-44, col. 9, lines 10-19 and col. 10, lines 55-67, a method for controlling gas flow into or out of a container assembly comprising the steps as claimed which including preparing the texture (roughness) of at least one of the sealing surface of a cap and a container.

7. In regard to claim 7-11, DeMeo disclose in figs. 1 and 4, and col. 4, lines 9-18, col. 8, lines 39-44, col. 9, lines 10-19 and col. 10, lines 55-67, a container assembly comprising a sealing

surface of at least one of a group of the container and the cap is prepared to have a desired, texture, wherein the cap includes a protrusion 23 being the sealing of the cap and the container includes a neck 15 being the sealing surface of the container.

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In regard to claims 12, the container further comprise a ledge 13 as a stopping surface (see col.5, lines 1-5), and therefore the sealing surface deformation can be limited by contact between stopping surfaces blocking tighter engagement of the cap with the container.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeMeo. DeMeo is not disclose the texture ranging form 1201E.-3104E. Or form DME 1-4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the DeMeo texture in the ranges as claimed , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

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harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 13-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14 and 17-19 of U.S. Patent No. 6,257,432 in view of DeMeo (5,972,292). Although the conflicting claims of the application claims and the Patent No. 6,257,432 claims are not identical, they are not patentably distinct from each other because claims 13-20 in the present application are merely boarder claims of claims 14 and 17-19 of the patent; therefore, the patented claims anticipate the application claim. See MPEP 806.04 (I) and *in re Goodman*, 11 F.3d 1046, 29 USPQ 2d 2010 (Fed. Cir.1993). Moreover, a coarsened surface is prepared in at least one sealing surface which is different between the present applications in

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claims 13-17 is not patentably distinct, because it is obvious to one having ordinary skill in the art at the time the invention was made to make the at least one of sealing surfaces with roughness, as taught by DeMeo, in order to control the gas flow into and out of a container assembly.

12. Claims 13-17, 19 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9, 13 and 14 of U.S. Patent No. 6,260,722 in view of DeMeo (5,972,292). Although the conflicting claims of the application claims and the Patent No. 6,260,722 claims are not identical, they are not patentably distinct from each other because claims 13-17, 19 and 20 in the present application are merely boarder claims of claims 9, 13 and 14 of the patent; therefore, the patented claims anticipate the application claim. See MPEP 806.04 (I) and in re Goodman, 11 F.3d 1046, 29 USPQ 2d 2010 (Fed. Cir.1993). Moreover, a coarsened surface is prepared in at least one sealing surface which is different between the present applications in claims 13-17 is not patentably distinct, because it is obvious to one having ordinary skill in the art at the time the invention was made to make the at least one of sealing surfaces with roughness, as taught by DeMeo, in order to control the gas flow into and out of a container assembly.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Kuehn, Laszlo et al., Summers, Safianoff, Wilkinson et al. teach containers with mouthpieces having sealing surfaces.

Watson et al., Toppen, Haines, Babiol and Brownbill teach rough sealing surfaces.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.



Lien Ngo

July 20, 2003